

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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**CECIL THOMAS AND JOHN DEAN on :**  
**behalf of themselves and all others similarly :**  
**situated, :**

**Case 2:13-CV-02789-SJF-SIL**

**Plaintiffs,**

**-against-**

**TXX SERVICES, INC. and PATRICIA :**  
**DOUGAN HUNT, :**

**Defendants.**  
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**STIPULATION AND ORDER WITHDRAWING HUNT  
EXHIBIT 4 FROM THE SUMMARY JUDGMENT RECORD**

WHEREAS, Defendants TXX Services, Inc. and Patricia Hunt (collectively, "Defendants") filed a Motion for Judgment on the Pleadings, which was fully briefed and converted by the Honorable District Judge Sandra J. Feuerstein on June 24, 2014 to a Motion for Summary Judgment (*see* Dckt. No. 113);

WHEREAS, Plaintiffs Cecil Thomas and John Dean (collectively, "Plaintiffs") filed a letter constituting their supplemental response in opposition to Defendants' Motion for Summary Judgment, and their own Motion for Summary Judgment, on September 8, 2014 (Dckt. No. 124) ("Plaintiffs' Opposition"), supported by the Declaration of Douglas Weiner, dated September 8, 2014, and certain exhibits thereto ("Weiner Declaration") (Dckt. No.125);

WHEREAS, Plaintiffs' Opposition included, within Exhibit B to the Weiner Declaration, a certain document marked as Hunt Exhibit 4 and titled "Delivery Company Keeps Tabs On Valuable Cargo With GPS" ("Hunt Exhibit 4");

WHEREAS, in accordance with the Honorable District Judge Feuerstein's Orders entered September 10, 2014 and September 15, 2014 (Dckt. No. 130), Defendants filed on

September 25, 2014 all summary judgment papers (Dckt. Nos. 131-145), including but not limited to Plaintiffs' Opposition (Dckt. No. 143), the Weiner Declaration (Dckt. Nos. 143-1, 143-2, 143-3), and Defendants' Supplemental Statement in Further Support of Their Motion for Summary Judgment in Response to Plaintiffs' Supplemental Facts and Admissions Adduced by the Testimony of TXX (Dckt. No. 144) which, *inter alia*, objected to Hunt Exhibit 4;

WHEREAS, on October 10, 2014, Defendants served on Plaintiffs, by email and first-class U.S. Mail, Defendants' Motion to Exclude Plaintiffs' Purported Evidence in Opposition to Defendants' Motion for Summary Judgment, along with supporting Declarations and Memorandum of Law, which, pursuant to Rule 3 of the Individual Motion Practices of the Honorable Magistrate Judge Steven I. Locke, has not been filed with the Court.

WHEREAS, the Motion to Exclude requests that the Court exclude Hunt Exhibit 4 from its consideration in deciding Defendants' Motion for Summary Judgment and Plaintiffs' Motion for Summary Judgment on the grounds that Hunt Exhibit 4 was not authenticated and that Hunt Exhibit 4 is inadmissible double hearsay which lacks foundational evidence; and

WHEREAS, Plaintiffs have agreed to withdraw Hunt Exhibit 4,

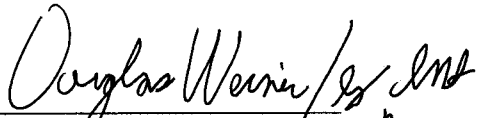
IT IS HEREBY STIPULATED AND AGREED, as follows:

1. All references to Hunt Exhibit 4 shall be stricken from the record on Defendants' Motion for Summary Judgment and Plaintiffs' Motion for Summary Judgment, and shall not be considered in relation to the Court's ruling on either Defendants' Motion for Summary Judgment or Plaintiffs' Motion for Summary Judgment, and shall not be considered part of the record for any purpose upon which any judgment can be based, except for this Stipulation and Order.

2. In order to prevent unnecessary filing, all references to Hunt Exhibit 4 shall be stricken from Plaintiffs' Opposition and the Weiner Declaration.

3. On the basis of the foregoing and in order to further prevent unnecessary filing, Defendants shall not file, and hereby withdraw, their Motion to Exclude.

**JOSEPH & KIRSCHENBAUM LLP**

By:   
Douglas Weiner *with permission*

233 Broadway, 5<sup>th</sup> Floor  
New York, NY 10279  
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Attorneys for Plaintiffs Cecil Thomas and John Dean

Dated: November 4, 2014  
New York, New York

**CROWELL & MORING LLP**

By: /s/ Jeffrey W. Pagano  
Jeffrey W. Pagano

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Attorneys for Defendants TXX Services, Inc. and Patricia Hunt

Dated: November 4, 2014  
New York, New York

**IT IS SO ORDERED:**

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**Steven I. Locke**  
**United States Magistrate Judge**